IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 13TH OCTOBER 2006 / 21ST ASWINA 1928

EFA.No. 32 of 1994

AGAINST THE ORDER DATED 11/10/1994 IN EA 63/93 IN
OS.126/1985 of PRINCIPAL SUB COURT, PALAKKAD

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APPELLANT/CLAIM PARTY IN THE SUIT:

R.P.VETRIVEL, S/O. R.S.PAZHANISWAMI
MAHALINGAPURAM, POLLACHI, TAMILNADU.

BY ADV. SRI.G.HARIHARAN
SMT.ANITHA U.MENON

IST RESPONDENT/PETITIONER/DECREE HOLDER:

1. PAZHANISWAMI, S/O. SUBBAYYA KOUNDER (DIED)
R.V. PUTHUR, ERUTHAMPATHI VILLAGE
CHITTUR TALUK

IIND RESPONDENT/RESPONDENT/JUDGMENT DEBTOR:

2. PACHAYAPPAN, S/O. SUBBAYYA KOUNDER
ARUMUGHALAYOUL, MAHALINGAPURAM
POLLACHI, TAMIL NADU

3. SMT. MYLATHAL, W/O. R.S. PALANISWAMI
AGED ABOUT 58 YEARS
R.V.PUTHUR P.O., CHITTUR , PALAKKAD

4. SMT. SELVA NAYAGAM, S/O. R.S.PALANISWAMY
AGED ABOUT 33 YEARS
R.V. P. PUDUR P.O., CHITTUR, PALAKKAD

ADDL. 3RD & 4TH RESPONDENTS ARE IMPLEADED AS
LEGAL HEIRS OF THE DECEASED 1ST RESPONDENT
AS PER ORDER DTD.26/10/04 IN I.A. NO. 3009/04

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 13/10/2006, THE COURT ON 13/10/2006 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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E.F.A. 32 OF 1994
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Dated this the 13th day of October, 2006

JUDGMENT

This appeal is against the dismissal of a claim petition under Order 21 Rule 58 of the Code of Civil Procedure. The claim petitioner is the appellant.

2. Based on a promissory note dated 30.6.1979, the suit O.S. 126 of 1985 was filed, leading to a decree that was confirmed in first appeal. The claim petitioner, on the basis of a promissory note dated 3.1.1983, filed O.S. No. 562 of 1992 on 28.11.1992 and obtained a decree on the defendant confessing judgment on the first date of hearing i.e, 18.1.1993. The claim petition from which this appeal arises is signed on 18.1.1993 and filed on 19.1.1993.

3. The court below found that the execution proceedings in O.S. No. 126 of 1985 from which this appeal arises was listed

on 14.10.1982 and since the judgment debtor remained absent, the sale was posted on 30.11.1992 and that it was in the meanwhile that the judgment debtor and the claim petitioner colluded in the institution of O.S. No. 562 of 1992 by the claim petitioner on 28.11.1992 leading to the decree herein, on confession, on 18.1.1993. After filing O.S. No. 562 of 1992 on 28.11.1992, the judgment debtor also filed E.A. No. 1071 of 1992 to set aside the ex-parte order against him and that was how the sale on 30.11.1992 was averted. It was further noticed that O.S. No. 562 of 1992 was filed on 28.11.1992, after issuing a notice on 26.11.1992 and without awaiting any reply. The Court below, after adverting to the materials on record, held that the claim petition is based on a collusive litigation between the judgment debtor and the claim petitioner. The claim petition was accordingly dismissed.

4. Having heard the counsel for the appellant, on the basis of the aforesaid facts and circumstances, I do not find any illegality, irregularity or impropriety in the proceedings of the

Court below or that the impugned judgment is illegal and wrong on any ground either on facts or in law. The appeal is without any merits. It fails. The same is accordingly dismissed. Since the Court below has imposed compensatory cost of Rs. 3,000/-, I deter from imposing any further order of costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE

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